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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 MICHAEL RODRIGUEZ,
7 Plaintiff,
8 v.
9 NAPHCARE, et al.,
10 Defendants.
11

Case No. 2:17-cv-02344-RFB-CWH

ORDER

12 Presently before the court is plaintiff Michael Rodriguez's Motion Requesting the Court
13 to Issue and Direct Service of a Subpoena Duces Tecum (ECF Nos. 81, 82), filed on November
14 29, 2018. The motion is unopposed.

15 Rodriguez is a pretrial detainee at the Clark County Detention Center. This case arises out
16 of his claims that his civil rights were violated when defendants abruptly stopped giving him
17 pain-management treatment he required for injuries he suffered in a motor vehicle accident in
18 2006, before he was incarcerated.

19 Rodriguez now moves for issuance of a subpoena to attorney Adam Kutner under Rule 45
20 of the Federal Rules of Civil Procedure. Through the subpoena, Rodriguez seeks to obtain
21 medical records created by Dr. Walter M. Kidwell related to the motor vehicle accident.
22 Rodriguez represents that he requested the records from Dr. Kidwell, and he attaches to his
23 motion a letter from the physician's office stating that the records were destroyed as more than
24 seven years have passed. (Mot. For Subpoena (ECF No. 81, 82) at Ex. 3.) Rodriguez further
25 represents that he requested the records from his former attorneys, Victor Cardoza and Adam
26 Kutner, whom the court understands to have represented Rodriguez in a state court lawsuit related
27 to the motor vehicle accident. Rodriguez attaches a letter from Mr. Cardoza indicating that he is
28 no longer associated with Mr. Kutner and that Mr. Kutner's office has Rodriguez's file. (*Id.* at

1 Ex. 5.) Rodriguez represents that Mr. Kutner's office has not responded to his requests for copies
2 of his records.

3 Rule 45 of the Federal Rules of Civil Procedure provides mechanisms for obtaining
4 discovery from nonparties. *See* Fed. R. Civ. P. 45. The scope of documents or information that
5 can be obtained through a subpoena under Rule 45 is the same as the scope of discovery generally
6 under Rule 26(b) of the Federal Rules of Civil Procedure. *Intermarine, LLC v. Spliethoff*
7 *Bevrachtungskantoor, B.V.*, 123 F. Supp. 3d 1215, 1217 (N.D. Cal. 2015). Under Rule 26, any
8 matter that is relevant to the party's claims and is proportional to the needs of the case is
9 discoverable, unless it is privileged. Fed. R. Civ. P. 26(b)(1).

10 Here, the medical records Rodriguez seeks are relevant to his claims and are proportional
11 to the needs of this case because they relate to the car accident causing the injuries for which
12 Rodriguez claims he needs pain medication. Given that the records are Rodriguez's own medical
13 records and are maintained in a file by his former attorney, it does not appear any privilege would
14 prevent Rodriguez from obtaining the documents. Rodriguez tailors the subpoena to "documents
15 containing Dr. Kidwell's medical opinions, evaluations, and recommendations, including but not
16 limited to disco gram studies, surgery recommendations, etc. relating to case no. A548081, date
17 of injury Jan. 10, 2006, Michael Rodriguez v. Amer. Fam. Ins. Co." Although it is unclear to the
18 court how voluminous the records are, based on the information provided, it does not appear to
19 the court that producing the records from Rodriguez's file would result in an undue burden on Mr.
20 Kutner. Further, Rodriguez has attempted to obtain the records from the physician directly as
21 well as from Mr. Cardoza, thus, it does not appear there is a more convenient or less expensive
22 manner for Rodriguez to obtain the records. *See* Fed. R. Civ. P. 26(b)(2)(C)(i); Fed. R. Civ. P.
23 45(d)(1). The court therefore will issue the requested subpoena. Given that Rodriguez is
24 proceeding *in forma pauperis*, the court will order the United States Marshal to serve the
25 subpoena under Rule 4(c)(3).

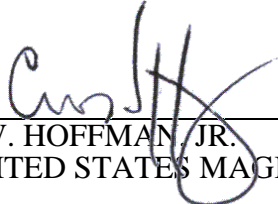
26 IT IS THEREFORE ORDERED that plaintiff Michael Rodriguez's Motion Requesting
27 the Court to Issue and Direct Service of a Subpoena Duces Tecum (ECF Nos. 81, 82) is
28 GRANTED.

1 IT IS FURTHER ORDERED that the clerk of court must send to Rodriguez a blank
2 USM-285 form, along with a copy of this order.

3 IT IS FURTHER ORDERED that Rodriguez must complete the USM-285 form and file it
4 with the court by January 25, 2019.

5 IT IS FURTHER ORDERED that upon receipt of Rodriguez's USM-285 form, the clerk
6 of court must issue the proposed subpoena that is attached as Exhibit 1 to ECF No. 81 and deliver
7 the USM-285 form and the subpoena to the U.S. Marshal for service.

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9 DATED: January 10, 2019

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12 C.W. HOFFMAN JR.
13 UNITED STATES MAGISTRATE JUDGE
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